

**From:** Rick Bradley  
**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

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To whom it may concern:

As a software developer with over a decade of professional experience I am writing to comment on the Proposed Final Judgment (hereafter "PFJ") in the United States v. Microsoft case.

The PFJ permits Microsoft's exclusionary practices to continue, allows Microsoft to maintain its monopoly through continued protection of the substantial barrier to entry to the operating systems market for Intel-compatible computers (the "Applications Barrier to Entry"), and allows for Microsoft's use of its customary exclusionary licensing regime to restrict the actions of OEM and independent software vendors (ISVs). This reality is in direct contrast with the intent of the PFJ, which the Court of Appeals states "must seek to 'unfetter a market from anticompetitive conduct', to 'terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future' (section V.D., p. 99). Further we must ask whether the PFJ is in the public interest.

Below I enumerate some of the many serious problems with the PFJ.

- The PFJ fails to prevent Microsoft from raising or maintaining artificial barriers (in many cases these artificial barriers have already been erected) against non-Microsoft operating systems which implement the APIs and/or middleware necessary to run application programs written for Windows.

As was discussed in the Findings of Fact, competing operating systems, such as Linux with its "Wine" compatibility layer, could leverage an interoperable version of the Windows APIs to run software written for Windows and thereby lower the Applications Barrier to Entry.

- The PFJ omits Microsoft Office, Microsoft Outlook, Microsoft.Net and C# from the definition of "Microsoft Middleware Product". These are the most significant middleware components in Microsoft's stable of products. Their absence in this definition exposes a fundamental flaw in the PFJ's middleware-related provisions.

- The overly narrow PFJ definitions of "Microsoft Middleware Product" and "API" means that many important APIs would remain undocumented, thereby eliminating the ability of third parties to interoperate with software written for Windows or to compete with Windows due to the Applications Barrier to Entry.

- The PFJ includes no requirement for documentation of Microsoft file formats, which were shown in the Findings of Fact to compromise a significant part of the Applications Barrier to Entry. Microsoft regularly changes proprietary file formats making interoperability impossible and further raising the Applications Barrier to Entry for competitors.

- The PFJ does not require Microsoft to disclose which patents protect the various Windows APIs, thus making it impossible for consumers, ISVs, and competitors to determine whether a competing operating system or middleware implementation infringes Microsoft patents. This state of affairs helps Microsoft maintain the Applications Barrier to Entry.

- Under the terms of the PFJ Microsoft is allowed to retaliate against OEMs who ship Personal Computers which contain a competing Microsoft operating system but no Microsoft operating system.

- The PFJ allows Microsoft to retaliate against smaller OEMs who offer Personal Computers with competing software installed. The large body of "white box" OEMs, as well as other brand-name small OEMs, serve a critical function in the market for server systems where potential Microsoft competitors such as Linux and FreeBSD have the best chance of making headway.

- The PFJ fails to curb Microsoft's use of unconscionable and/or exclusionary End-User License Agreements (EULAs). Microsoft uses these EULAs to prohibit the use of certain services and applications on Microsoft-compatible operating systems.

- The PFJ does nothing to address intentional incompatibilities

introduced by Microsoft to exclude competitors (e.g., Caldera) from the operating systems market.

- Under the terms of the PFJ enforcement is left to the legal system, while the Technical Committee has too little power to effectively oversee future Microsoft anti-competitive practices.

- Oversight of Microsoft practices is remanded to a small group whose makeup is at least equally determined by Microsoft. Microsoft has been found to be in violation of anti-trust law, and yet has been allowed to construct the PFJ enforcement terms to ensure that the Technical Committee will be ineffective in its oversight role.

The proposal as negotiated does little to change the illegal behavior of which Microsoft has been convicted, nor does it address the multitude of anticompetitive abuses committed since the issuance of the Findings of Fact. The PFJ amounts to a wrist-slap which will fail to materially alter Microsoft's behavior, promote competition, or penalize Microsoft for past transgressions.

While this proposal is fundamentally flawed, any acceptable proposal must additionally perform the following functions:

- restrict Microsoft from retaliating against all OEMs, ISVs, Internet Access Providers (IAPs), and competitors
- define operating system and middleware components in such a manner as to correspond to the reality regarding the importance of high-profile components in Microsoft's current and future plans
- require Microsoft to disclose, sufficiently in advance to allow middleware vendors and interoperators to reasonably implement necessary compatibility changes, complete documentation on Microsoft APIs, file formats, and patent protection information for all versions of the Windows operating system and all Windows middleware components
- prohibit Microsoft from implementing incompatibilities designed to keep its applications and services from being run or accessed on competing operating systems.
- provide oversight which is more transparent to regulators and consumers
- provide an oversight body which has more human and technical resources, and bar Microsoft from influencing the make-up of the body.

The Proposed Final Judgment in the United States v. Microsoft case is fundamentally flawed and does little to "unfetter [the] market from anticompetitive conduct", fails to terminate Microsoft's illegal monopoly, and preserves intact countless practices which will maintain and extend the Microsoft monopoly in the future.

This proposal is most definitely not in the public interest.

Sincerely,

Rick Bradley